SINGLE BENCH (I) 3

C/F/21/-

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.2794 OF 2005.

PETITIONER : Dr. L. Patnaik, S/o. Sri Sachidananda Patnaik, aged about 47 years, Assistant Manager, R/o A- 69, Surya Apartments *Katora Talab, Raipur, Distt : Raipur (C G).*

VERSUS

RESPONDENTS : 1. United India Insurance Co Ltd, through its Chairman-Cum-Managing Director, Head Office, 24 , Whites Road, *Chennai* - 600 014.

2. The General Manager (Personnel) United India Insurance Co. Ltd, Head Office, 24, White Road, Chennai - 600 014.

Presented by Shri V. Deshmukh dated 29/6/05

3. The Asst. General Manager (Personnel) United India Insurance Co Ltd, Head Office, 24, Whites Road, Chennai - 600 014.

4. The Regional Manager, United India Insurance Co Ltd, Regional Office, Pariyawas Bhavan Block No.2, & 2nd floor, Arrera Hills, Jail Road, Bhopal - 462 011 (M.P.)

5. The Divisional Manager, United India Insurance Co Ltd, Divisional Office, Krishna Complex- 1st floor, Kachery Chowk, Raipur, Distt :Raipur – 492 001 (C.G.)

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.

A.F.R

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. No.2794/2005

Dr.L. Patnaik

Vs.

United India Insurance Company
Through its Chairman-cum-Managing
Director and others

ORDER

Post for 24.8.2005

Sd/-
Sunil Kumar Sinha
Judge

Noted.
P S Koshy
24/08/05

Noted
Anand Kumar Tiwari
24/8/05

212

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. No.2794/2005

Dr.L. Patnaik

Vs.

United India Insurance Co. Ltd.,
through its Chairman-cum-Managing Director
and others

Shri P.S. Koshy, counsel for the petitioner.

Shri Kanak Tiwari, Sr. Advocate with Shri Anand Kumar Tiwari, counsel for the respondents.

ORDER
(24.8.2005)

Sunil Kumar Sinha, J,

(1) The petitioner, who is posted as Assistant Manager, in United India Insurance Company Limited, Raipur since 26.12.2003, has challenged the validity of his transfer order dated 16.6.2005, whereby he has been transferred from Divisional Office, Raipur to Regional Office, Lucknow.

(2) The facts stated are that the Central Bureau of Investigation conducted a raid on 06.4.2005 in the Divisional Office, Raipur and Branch Office Bilaspur including the residences of Dr.B.R. Singh, Divisional Manager, Raipur and Shri C.J. Arora, Branch Manager, Bilaspur. On the date of raid, Shri B.R. Singh was on leave and the petitioner was available in the office as Senior Most Officer. The petitioner submitted all the information and documents/files to the C.B.I. team as per their requirement and for all these

reasons he became a witness of the search proceedings of C.B.I. for their Case No.RC2(A)/2005/CBI/JBP registered under sections 120-B and 420 IPC and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988, against Shri B.R. Singh, being accused no.2 and Mr.C.J. Arora, Branch Manager, Bilaspur being accused no.1. During the search, print and electronic media persons were also accompanying the C.B.I. team and the entire episode of raid was covered by them. The media persons took interview of the petitioner and the petitioner stated about the registration of Criminal Case against the Divisional Manager, Raipur as well as Branch Manager, Bilaspur before them. It is after all this, a show cause notice was issued to the petitioner on 08.4.2005 (Annexure P-6) leveling charges against him that due to his statements etc., the market image of the Company was undermined. The petitioner submitted his reply on 11.4.2005 (Annexure P-7) but even after that, he was served with a charge sheet dated 21.4.2005 vide Annexure P-8 initiating a departmental enquiry against him, which is still pending after taking his reply on 19.5.2005. It is after all this, the petitioner and both the officers from divisional office, Raipur and Branch Office, Bilaspur, were transferred by a common transfer order dated 16.6.2005. The case of the petitioner is that the above series of events clearly reveals and reflects the vindictive attitude and mala-fide of respondents no.2 to 5 to harass the petitioner through a conspiracy by passing the order of transfer so that the facts of corruption against respondent no.5 cannot be revealed properly and the investigation of C.B.I., can be diluted.

(3) In return, the respondents have contended that the transfer is not a punishment. It is in the realm of administrative discretion of the employer. No claim or proceeding can be filed challenging the impugned transfer order unless malafides have been convincingly/successfully attributed, or violation of some statutory rule is displayed in the petition, which having not been done, the petition cannot succeed. They have further contended that the issuance of a show cause notice/charge sheet resulting into initiation of a disciplinary proceedings will not amount to mala-fides and on this ground also the petitioner cannot claim the quashing of his transfer order.

(4) A rejoinder has also been filed in which the petitioner has pleaded that while working at Raipur he observed several serious irregularities and open malpractices in flagrant violation of various operational and administrative guidelines. The rules and procedures were twisted /manipulated to pave ways for wrongful loss to the company and concomitant gain to others. Highlighting many instances, the petitioner contended that the impugned order of transfer has been issued with malafide intentions to harass the petitioner and to put un due pressure on him so as to ensure that the petitioner, who is also a witness in C.B.I's case, does not depose against the accused officials of the respondents company who would otherwise get implicated in the above C.B.I case.

(5) I have heard learned counsel for the parties at length and have also perused the records of the writ petition.

(6) At the hearing, learned counsel for the petitioner raised two important points. He firstly raised the ground of malafides and secondly he submitted that the order of transfer has been issued in violation of the transfer and Mobility Policy/guidelines effective from 1st of June 2002. First of all, referring to the decision rendered in case ***of The State of Punjab and another –vs- Gurdial Singh and others AIR 1980 S.C. 319***, learned counsel submitted that the action of the respondents would show that the order of transfer was not issued in good faith. It has been issued in colorable exercise of powers by the appointing authority which is an out come of malafide. Arguing what amounts to malafides, he draws the attention of this court towards para 9 of the aforesaid judgment which reads as under:-

> "Bad faith which invalidates the exercise of power – sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions – is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous consideration, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the Court calls it a colourable exercise and is undeceived by illusion."

He further refers to the decision rendered in the matter of ***Rajendra Roy –Vs- Union of India and another, (1993) 1 SCC 148*** and argued that it may not always be possible to establish

malice in fact in a straight cut manner but in a proper case it is possible to draw reasonable inference of malafide action from the pleadings and antecedent facts and circumstances. Learned counsel submitted that in the present case the antecedent facts of C.B.I. raid and the petitioner being a witness in the C.B.I. raid and thereafter his interview before the print and electronic media coupled with the issuance of charge sheet are sufficient to draw reasonable inference of malafide against the employer resulting into transfer of the petitioner.

(7) Now the matter for consideration is whether this order of transfer, passed after the said incident of raid on 06.4.2005 by the C.B.I. would amount to colourable exercise of powers or an out come of malafide or not ? It is the case of the petitioner himself that on the fateful day when the C.B.I. raid was conducted, the petitioner was the senior most officer available in his branch at Raipur. As per his own assertion, in the raid conducted by the C.B.I., the petitioner properly assisted them and thereafter a criminal case was registered against the said Divisional Manager and Branch Manager of the respondents' Company. Since the persons of print and electronic media were also there, the petitioner had to tell the truth to them and the same was published in the news item. This action on the part of the petitioner may be prejudicial to the interest of the Divisional Manager, but how it was against the interest of the employer is not shown by him. If a particular wrong is going on in a branch and the head of the department is sitting at a long distance (like

Chennai in the present case) and the wrong is discovered by one of the officers of the branch against the head of the Branch, then certainly the employer would be thankful to the employee who has discovered the wrong and has brought it to the notice of the employer. I do not feel that an assistance of such nature by an honest employee would in any manner affect the feelings of the employer to act against the interest of such employee and to interact in a manner of bad faith with colourable exercise of powers which may amount to malafide against the said employee. If we examine the order of transfer in the back ground of all the above incidents, it would appear that it is an order of transfer of all the three employees namely the petitioner as well as Dr.B.R. Singh, Divisional Manager and Shri C.J. Arora, Branch Manager, Bilaspur. If the employer would have exercised its powers upon extraneous considerations, then it would not have issued the order of transfer of all these persons, who were involved in the raid of the C.B.I. Putting differently, we may also assume that if some favour was to be extended either to Dr.B.R. Singh or to Mr. C.J. Arora, then they would have been retained at their respective places throwing the petitioner only by passing an order of transfer for him. But in the present case, all the officers have been transferred by a common order dated 16.6.2005 issued by the concerned authority of the employer. Another important factor is that the petitioner assumes the status of a witness whereas the said two persons, according to the petitioner, are the accused in this case. The matter relates to the particular divisional office in which the petitioner and Dr.B.R. Singh were working and various

charges of corruption and criminal conspiracy etc., are to be investigated against the Divisional Manager Dr. Singh and if both the persons have been thought to be kept at different places other than the place of occurrence, then it cannot be said that the authorities of the employer have adopted a malafide attitude against the petitioner or even against the divisional manager in keeping them away from the present office where the charges leveled against the accused persons are to be investigated in accordance with law.

(8) In the decision rendered in the matter of Rajendra Roy (supra), the apex Court has categorically said that for drawing a reasonable inference of malafide action, there must be firm foundation of facts pleaded and such inference cannot be drawn on the basis of insinuation and vague suggestions. In the present case, if we examine the entire case of the petitioner considering the chronological events pleaded by him, a reasonable inference of malafide action cannot be drawn. The action of the petitioner regarding his working in the office and the allegations levelled by him against the Divisional Manager and thereafter the raid of C.B.I. and interview in press and electronic media and issuance of a charge sheet against the petitioner on certain allegations does not make a firm foundation on which a reasonable inference of mala fide could be drawn against the employer.

(9) It is a settled principle that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since

transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer as shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position has been recently laid down by the Apex Court in the matter of ***State of U.P. -Vs- Siya Ram AIR 2004 S.C. 4121***, referring to the decision rendered in the matter of ***National Hydroelectric Power Corporation Ltd. -Vs- Shri Bhagwan and another (2001) 8 SCC 574***. There is no force in the arguments advanced by the learned counsel for the petitioner and the same cannot be accepted.

(10) Now the second point raised by the learned counsel for the petitioner is regarding violation of transfer and mobility policy/ guidelines. Referring to the Division Bench decision of Bombay High Court, rendered in the matter of ***Seshrao Nagorao Umap - Vs- State of Maharashtra and others 1985 (II) LLJ 73***, learned counsel submitted that like any other executive/administrative power, the power of transfer must be exercised in good faith and as per the guidelines laid down in that behalf. He further submits

that the management is bound by its own policy decision and it must enforce it faithfully and while implementing the policy it cannot pick and choose. This argument advanced by learned counsel for the petitioner cannot be accepted as it has been held by the Bombay High Court in the aforesaid judgment itself that such executive instructions or a policy decision cannot confer any enforceable legal right nor an order issued in breach of it, will become *per se* illegal. The Bombay High Court has further held that these instructions could be directory in nature and there could be exceptions to the general rule due to exigencies of services or due to some administrative reasons, but the exception cannot be permitted to become a rule and it is equally well settled that Courts should not interfere with the orders of transfers, which are issued in the exigencies of service and in discharge of administrative or executive power. (please see para 5 of the aforesaid judgment). It has been held in the matter of ***Union of India and others -Vs- S.L. Abbas AIR 1993 S.C. 2444*** that who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. But, the guidelines issued by the Government do not confer upon employee any legally enforceable right.

(11) Besides the above, if we examine the contents of the guidelines filed as Annexure P-3, it is stated in para 4 under Column 'C' that Normal Period of Posting (NPP) shall mean continuous posting in all cadres of class-I taken together for a period of 5 years in respect of all centers. Column 'D' of the said guidelines relates to the General Regulations. Para (II) of the Regulations provides that on completion of normal period of posting (NPP), an officer will be due for transfer, but para(iii) of the aforesaid General Regulations further provides that "nothing contained herein shall be construed to limit the powers of the Management to transfer any officer before completion of the normal period of posting." Even if we apply the transfer policy in its strict sense, this is not going to help the petitioner on the ground that the petitioner has not completed a normal period of posting (NPP) of 5 years at Raipur and he would not have been transferred from the said place prior to completion of the said period.

(12) In the particular facts and circumstances of this case, I am not inclined to interfere with the order of transfer issued to the petitioner on 16.6.2005. The petition has no force and the same is dismissed. However, I direct the parties to bear their own costs.

Sd/-
Sunil Kumar Sinha
Judge

/Rao/